

116TH CONGRESS  
2D SESSION

# H. R. 7837

To provide a payroll tax credit for certain employee dependent care expenses paid by employers.

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IN THE HOUSE OF REPRESENTATIVES

JULY 29, 2020

Mr. LAMB (for himself, Ms. SÁNCHEZ, and Mr. FITZPATRICK) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To provide a payroll tax credit for certain employee dependent care expenses paid by employers.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Supporting American  
5 Families, Employers, Kids and Jobs Act” or as the  
6 “SAFE Kids and Jobs Act”.

1 **SEC. 2. PAYROLL CREDIT FOR CERTAIN EMPLOYEE DE-**  
2 **PENDENT CARE EXPENSES PAID BY EMPLOY-**  
3 **ERS.**

4 (a) **IN GENERAL.**—In the case of an employer, there  
5 shall be allowed as a credit against applicable employment  
6 taxes for each calendar quarter an amount equal to 30  
7 percent of the qualified employee dependent care expenses  
8 paid by such employer with respect to such calendar quar-  
9 ter.

10 (b) **LIMITATIONS AND REFUNDABILITY.**—

11 (1) **DOLLAR LIMITATION PER EMPLOYEE.**—The  
12 qualified employee dependent care expenses which  
13 may be taken into account under subsection (a) with  
14 respect to any employee for any calendar quarter  
15 shall not exceed \$2,500.

16 (2) **CREDIT LIMITED TO CERTAIN EMPLOYMENT**  
17 **TAXES.**—The credit allowed by subsection (a) with  
18 respect to any calendar quarter shall not exceed the  
19 applicable employment taxes for such calendar quar-  
20 ter (reduced by any credits allowed under sub-  
21 sections (e) and (f) of section 3111 of such Code,  
22 sections 7001 and 7003 of the Families First  
23 Coronavirus Response Act, section 2301 of the  
24 CARES Act, and section 4 of this Act, for such  
25 quarter) on the wages paid with respect to the em-

1       employment of all the employees of the employer for  
2       such calendar quarter.

3               (3) REFUNDABILITY OF EXCESS CREDIT.—

4                       (A) IN GENERAL.—If the amount of the  
5       credit under subsection (a) exceeds the limita-  
6       tion of paragraph (2) for any calendar quarter,  
7       such excess shall be treated as an overpayment  
8       that shall be refunded under sections 6402(a)  
9       and 6413(b) of the Internal Revenue Code of  
10       1986.

11                      (B) TREATMENT OF PAYMENTS.—For pur-  
12       poses of section 1324 of title 31, United States  
13       Code, any amounts due to an employer under  
14       this paragraph shall be treated in the same  
15       manner as a refund due from a credit provision  
16       referred to in subsection (b)(2) of such section.

17               (4) COORDINATION WITH GOVERNMENT  
18       GRANTS.—The qualified employee dependent care  
19       expenses taken into account under this section by  
20       any employer shall be reduced by any amounts pro-  
21       vided by any Federal, State, or local government for  
22       purposes of making or reimbursing such expenses.

23               (c) QUALIFIED EMPLOYEE DEPENDENT CARE EX-  
24       PENSES.—For purposes of this section—

1           (1) IN GENERAL.—The term “qualified em-  
2     ployee dependent care expenses” means any amount  
3     paid to or for the benefit of an employee in the em-  
4     ployment of the employer if—

5           (A) such amount is dependent care assist-  
6     ance (as defined in section 129(e)(1) of the In-  
7     ternal Revenue Code of 1986); and

8           (B) the employer elects (at such time and  
9     in such manner as the Secretary may provide)  
10    to treat such amount as a qualified employee  
11    dependent care expense.

12          (2) EXCLUSION OF AMOUNTS PAID THROUGH  
13    SALARY REDUCTION ARRANGEMENTS.—Such term  
14    shall not include any amount paid at the election of  
15    the employee under a salary reduction arrangement.

16    (d) SPECIAL RULES; OTHER DEFINITIONS.—

17          (1) APPLICATION OF CERTAIN NON-DISCRIMINA-  
18    TION RULES.—No credit shall be allowed under this  
19    section to any employer for any calendar quarter if  
20    qualified employee dependent care expenses are pro-  
21    vided by such employer to employees for such cal-  
22    endar quarter in a manner which discriminates in  
23    favor of highly compensated individuals (within the  
24    meaning of section 125) as to eligibility for, or the  
25    amount of, such benefit expenses.

1           (2) DENIAL OF DOUBLE BENEFIT.—For pur-  
2           poses of chapter 1 of such Code, no deduction or  
3           credit (other than the credit allowed under this sec-  
4           tion) shall be allowed for so much of qualified em-  
5           ployee dependent care expenses as is equal to the  
6           credit allowed under this section.

7           (3) THIRD-PARTY PAYORS.—Any credit allowed  
8           under this section shall be treated as a credit de-  
9           scribed in section 3511(d)(2) of such Code.

10          (4) APPLICABLE EMPLOYMENT TAXES.—For  
11          purposes of this section, the term “applicable em-  
12          ployment taxes” means the following:

13                (A) The taxes imposed under section  
14                3111(a) of the Internal Revenue Code of 1986.

15                (B) So much of the taxes imposed under  
16                section 3221(a) of such Code as are attrib-  
17                utable to the rate in effect under section  
18                3111(a) of such Code.

19          (5) SECRETARY.—For purposes of this section,  
20          the term “Secretary” means the Secretary of the  
21          Treasury or the Secretary’s delegate.

22          (6) CERTAIN TERMS.—

23                (A) IN GENERAL.—Any term used in this  
24                section which is also used in chapter 21 or 22  
25                of such Code shall have the same meaning as

1 when used in such chapter (as the case may  
2 be).

3 (B) CERTAIN PROVISIONS NOT TAKEN  
4 INTO ACCOUNT EXCEPT FOR PURPOSES OF LIM-  
5 ITING CREDIT TO EMPLOYMENT TAXES.—For  
6 purposes of subparagraph (A) (other than with  
7 respect to subsection (b)(2)), section 3121(b) of  
8 such Code shall be applied without regard to  
9 paragraphs (1), (5), (6), (7), (8), (10), (13),  
10 (18), (19), and (22) thereof (except with re-  
11 spect to services performed in a penal institu-  
12 tion by an inmate thereof) and section  
13 3231(e)(1) shall be applied without regard to  
14 the sentence that begins “Such term does not  
15 include remuneration”.

16 (e) CERTAIN GOVERNMENTAL EMPLOYERS.—

17 (1) IN GENERAL.—The credit under this section  
18 shall not be allowed to the Federal Government or  
19 any agency or instrumentality thereof.

20 (2) EXCEPTION.—Paragraph (1) shall not  
21 apply to any organization described in section  
22 501(c)(1) of the Internal Revenue Code of 1986 and  
23 exempt from tax under section 501(a) of such Code.

24 (f) TREATMENT OF DEPOSITS.—The Secretary shall  
25 waive any penalty under section 6656 of such Code for

1 any failure to make a deposit of applicable employment  
2 taxes if the Secretary determines that such failure was due  
3 to the anticipation of the credit allowed under this section.

4 (g) REGULATIONS.—The Secretary shall prescribe  
5 such regulations or other guidance as may be necessary  
6 to carry out the purposes of this section, including regula-  
7 tions or other guidance—

8 (1) to allow the advance payment of the credit  
9 determined under subsection (a), subject to the limi-  
10 tations provided in this section, based on such infor-  
11 mation as the Secretary shall require;

12 (2) to provide for the reconciliation of such ad-  
13 vance payment with the amount of the credit at the  
14 time of filing the return of tax for the applicable  
15 quarter or taxable year;

16 (3) for recapturing the benefit of credits deter-  
17 mined under this section in cases where there is a  
18 subsequent adjustment to the credit determined  
19 under subsection (a); and

20 (4) with respect to the application of the credit  
21 to third-party payors (including professional em-  
22 ployer organizations, certified professional employer  
23 organizations, or agents under section 3504 of such  
24 Code), including to allow such payors to submit doc-  
25 umentation necessary to substantiate eligibility for,

1 and the amount of, the credit allowed under this sec-  
2 tion.

3 (h) APPLICATION OF SECTION.—This section shall  
4 apply only to qualified employee dependent care expenses  
5 paid after the date of the enactment of this Act and before  
6 January 1, 2021.

7 (i) TRANSFERS TO CERTAIN TRUST FUNDS.—There  
8 are hereby appropriated to the Federal Old-Age and Sur-  
9 vivors Insurance Trust Fund and the Federal Disability  
10 Insurance Trust Fund established under section 201 of  
11 the Social Security Act (42 U.S.C. 401) and the Social  
12 Security Equivalent Benefit Account established under  
13 section 15A(a) of the Railroad Retirement Act of 1974  
14 (45 U.S.C. 231n–1(a)) amounts equal to the reduction in  
15 revenues to the Treasury by reason of this section (without  
16 regard to this subsection). Amounts appropriated by the  
17 preceding sentence shall be transferred from the general  
18 fund at such times and in such manner as to replicate  
19 to the extent possible the transfers which would have oc-  
20 curred to such Trust Fund or Account had this section  
21 not been enacted.

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